

PT 03-4

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**LUTHERAN CHILD AND
FAMILY SERVICES OF ILLINOIS,
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

Docket No: 01-PT-0075

**Real Estate Exemption
For 2001 Tax Year**

P.I.N. 10-06-200-003

DuPage County Parcel

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Eric D. Anderson, Overgaard & Davis, on behalf of Lutheran Child And Family Services of Illinois; Mr. Robert G. Rybica, on behalf of DuPage County; Mr. Michael Abramovic on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: This proceeding raises the issue of whether real estate, identified by DuPage County Parcel Index Number 10-06-200-003 (hereinafter the “subject property”), should be exempt from 2001 real estate taxes under section 15-65 of the Property Tax Code, which exempts all property owned by a charity and actually and exclusively used for charitable purposes. 35 ILCS 200/15-65.

This controversy arose as follows: On November 20, 2000, Lutheran Child and Family Services of Illinois, (hereinafter “Lutheran-Illinois”) filed a Property Tax Exemption Complaint with the DuPage County Board of Review seeking exemption

from real estate taxes for the subject property. On June 27, 2001, the Board reviewed Lutheran-Illinois' Complaint and recommended that the exemption be denied. The Department of Revenue of the State of Illinois (hereinafter the "Department") accepted the Board's recommendation in a determination dated August 30, 2001, finding that the property was not in exempt ownership or use in tax year 2001. Lutheran-Illinois filed a timely appeal of the Department's determination. On September 25, 2002, a formal administrative hearing was held with Alvin Frost, Vice-President and Chief Development Officer for Lutheran-Illinois, testifying. Following a careful review of the testimony and evidence, it is recommended that the property be denied an exemption for the 2001 tax year.

FINDINGS OF FACT:

1. Group Ex. No. 1 establishes the Department's jurisdiction over this matter and its position that, in tax year 2001, the property was not in exempt ownership or exempt use. Tr. p. 10; Gr. Ex. No. 1.
2. The subject property is located at 20W253 West 87th Street in Downers Grove. Lutheran-Illinois purchased the property under an "Agreement For Deed" from the Northern Illinois District of the Lutheran Church-Missouri Synod ("Missouri-Synod") on December 1, 1995. Tr. pp. 19-20; Gr. Ex. No. 3.
3. Lutheran-Illinois sold the subject property on December 8, 2000. Tr. pp. 41-42; Gr. Ex. No. 14.

CONCLUSIONS OF LAW:

An examination of the record establishes that Lutheran-Illinois has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 2001 real estate taxes. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983). In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code which exempts all property which is both: (1) owned by

“institutions of public charity” and (2) “actually and exclusively used for charitable or beneficent purposes” (35 ILCS 200/15-65).

In the instant case, Lutheran-Illinois purchased the subject property under an “Agreement For Deed” from the Missouri Synod on December 1, 1995. Tr. pp. 19-20; Gr. Ex. No. 3. The subject property was sold on December 8, 2000. Tr. pp. 41-42; Gr. Ex. No. 14. Based on the evidence and testimony presented at the evidentiary hearing, I must conclude that the subject property was not owned by Lutheran-Illinois during the 2001 tax year. In order for property to qualify for exemption under Section 15-65 of the Property Tax Code, both ownership by a charitable institution and charitable use are required. 35 ILCS 200/15-65. Since Lutheran-Illinois has failed to establish ownership of the subject property during the 2001 tax year, it is not necessary to address whether the property was used for charitable purposes during that year.

For these reasons, it is recommended that the Department’s determination which denied the exemption from 2001 real estate taxes for the subject property on the grounds that the subject property was not owned or used by an “institution of public charity” should be affirmed and DuPage County Parcel, Index Number 10-06-200-003, should not be exempt from 2001 real estate taxes.

January 8, 2003

Kenneth J. Galvin